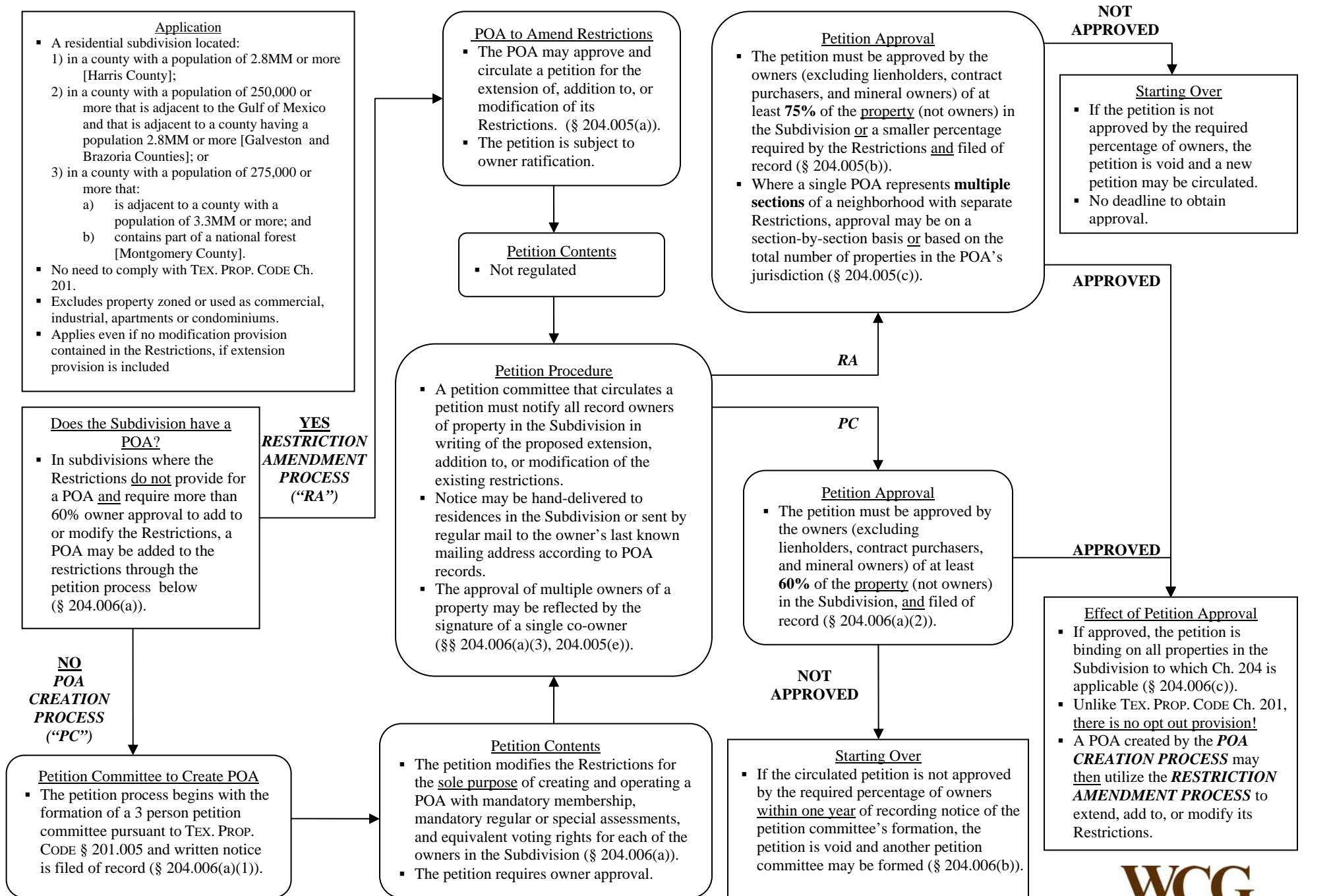


TEXAS PROPERTY CODE CHAPTER 204:

Creating a Property Owners' Association and Extending, Adding to, or Modifying Existing Restrictions



CHAPTER 204 DEFINITIONS

Restrictions: 1 or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the county real property records, map records, or deed records.

Residential real estate subdivision or subdivision: all land within 1 or more maps or plats of land that is divided into 2 or more parts if the maps or plats cover land within a city, town, or village, or within the ETJ of a city, town, or village and are recorded in the deed, map, or real property records of a county, and the land within the maps or plats is or was burdened by restrictions limiting all or at least a majority of the land area covered by the map or plat, excluding streets and public areas, to residential use only; **or** all land located within a city, town, or village, or within the ETJ of a city, town, or village that has been divided into 2 or more parts and that is or was burdened by restrictions limiting at least a majority of the land area burdened by restrictions, excluding streets and public areas, to residential use only, if the instrument or instruments creating the restrictions are recorded in the deed or real property records of a county.

Owner: an individual, fiduciary, partnership, joint venture, corporation, association, or other entity that owns record title to real property in a subdivision, **or** the personal rep. of an individual who owns record title to subdivision property.

Petition: 1 or more instruments, however designated or entitled, by which 1 or more actions relating to restrictive covenants are sought to be accomplished.

Property Owners' Association ("POA"): a designated representative of the owners of property in a subdivision and may be referred to as a "homeowners association," "community association," "civic association," "civic club," "association," "committee," or similar term contained in the restrictions. The membership of the association consists of the owners of property within the subdivision. The association must be nonprofit and may be incorporated as a Texas nonprofit corporation. An unincorporated association may incorporate under the Texas Non-Profit Corporation Act (Sec. 22.001 et seq., Business Organization Code). The association's board of directors or trustees must be elected or appointed in accordance with the applicable provisions of the restrictions and the association's articles of incorporation or bylaws.

Real property records: the applicable records of a county clerk in which conveyances of real property are recorded.

Lienholder: an individual, corporation, financial institution, or other entity that holds a vendor's or deed of trust lien secured by land within the subdivision.

Dedictory instrument: each governing instrument covering the establishment, maintenance, and operation of a residential subdivision, planned unit development, condominium or townhouse regime, or any similar planned development. The term includes a declaration or similar instrument subjecting real property to restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association, to properly adopted rules and regulations of the POA, or to all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.

Restrictive covenant: any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.

Regular assessment: an assessment, charge, fee, or dues that each owner of property within a subdivision is required to pay to the POA on a regular basis and that are to be used by the association for the benefit of the subdivision in accordance with the original, extended, added, or modified restrictions.

Special assessment: an assessment, charge, fee, or dues that each owner of property within a subdivision is required to pay to the POA, after a vote of the membership, for the purpose of paying for the costs of capital improvements to the common areas that are incurred or will be incurred by the association during the fiscal year. A special assessment may be assessed before or after the association incurs the capital improvement costs.

CHAPTER 204: STATUTORY POWERS OF A PROPERTY OWNERS' ASSOCIATION

Unless otherwise provided by the restrictions or the association's articles of incorporation or bylaws, the POA, acting through its board of directors or trustees, may:

- (1) adopt and amend bylaws;
- (2) adopt and amend budgets for revenues, expenditures, and reserves and collect regular assessments or special assessments for common expenses from property owners;
- (3) hire and terminate managing agents and other employees, agents, and independent contractors;
- (4) institute, defend, intervene in, settle, or compromise litigation or administrative proceedings on matters affecting the subdivision;
- (5) make contracts and incur liabilities relating to the operation of the subdivision and the POA;
- (6) regulate the use, maintenance, repair, replacement, modification, and appearance of the subdivision;
- (7) make additional improvements to be included as a part of the common area;
- (8) grant easements, leases, licenses, and concessions through or over the common area;
- (9) impose and receive payments, fees, or charges for the use, rental, or operation of the common area and for services provided to property owners;
- (10) impose interest, late charges, and, if applicable, returned check charges for late payments of regular assessments or special assessments;
- (11) if notice and an opportunity to be heard are given, collect reimbursement of actual attorney's fees and other reasonable costs incurred by the POA relating to violations of the subdivision's restrictions or the POA's bylaws and rules;
- (12) charge costs to an owner's assessment account and collect the costs in any manner provided in the restrictions for the collection of assessments;
- (13) adopt and amend rules regulating the collection of delinquent assessments and the application of payments;
- (14) impose reasonable charges for preparing, recording, or copying amendments to the restrictions, resale certificates, or statements of unpaid assessments;
- (15) purchase insurance and fidelity bonds, including directors' and officers' liability insurance, that the board considers appropriate or necessary;
- (16) if the restrictions allow for an annual increase in the maximum regular assessment without a vote of the membership, assess the increase annually or accumulate and assess the increase after a number of years;
- (17) subject to the requirements of the Texas Non-Profit Corporation Act (Sec. 22.001 et seq., Business Organization Code) and by majority vote of its board of directors, indemnify a director or officer of the POA who was, is, or may be made a named defendant or respondent in a proceeding because the person is or was a director;
- (18) if the restrictions vest the architectural control authority in the POA or if the authority is vested in the POA under Section 204.011:
 - (A) implement written architectural control guidelines for its own use or record the guidelines in the real property records of the applicable county; and
 - (B) modify the guidelines as the needs of the subdivision change;
- (19) exercise other powers conferred by the restrictions, its articles of incorporation, or its bylaws;
- (20) exercise other powers that may be exercised in this state by a corporation of the same type as the POA; and
- (21) exercise other powers necessary and proper for the governance and operation of the POA.